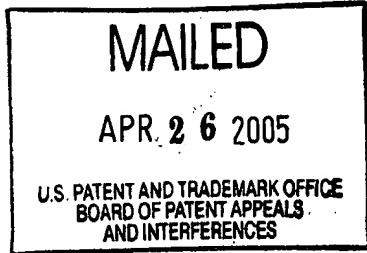


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES



Ex parte RICCARDO EVANGELISTI
and JOEL CAILLIER

Appeal No. 2004-1989
Application No. 09/830,245

ON BRIEF

Before PAK, OWENS, and KRATZ, Administrative Patent Judges.

PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 22 through 42, which are all of the claims pending in the above-identified application.

According to appellants (Brief, page 9), "[u]nder 37 CFR [§] 1.192(c)(7),... the claims stand or fall together." Therefore, for purposes of this appeal, we select claims 22,

27 and 30 as representative of separate groups of the claims subject to different grounds of rejection and decide the propriety of the examiner's different prior art rejections based on claims 22, 27 and 30 alone consistent with 37 CFR § 1.192(c)(7) (2003) and 37 CFR § 41.37(c)(1)(vii)(2004). **See *In re McDaniel***, 293 F.3d 1379, 1384, 63 USPQ2d 1462, 1465-66 (Fed. Cir. 2002). Claims 22, 23, 26, 27 and 30 are reproduced below:¹

22. A vacuum packaging machine for performing a vacuum sealing operation on product packages, comprising a permanently vertical stack of vacuum chambers each arranged to receive at least one unsealed product package and operable to perform an independent vacuum sealing operation on the at least one product package.

23. A vacuum packaging machine according to claim 22, further comprising a conveyor arrangement operable to load and unload a selective vacuum chamber with the at least one product package, the machine being operable to operate respective vacuum chambers to perform the vacuum sealing operation while the conveyor arrangement is operated to load and unload another vacuum chamber.

26. A vacuum packaging machine according to claim 23, wherein the conveyor arrangement includes at least one in-feed conveyor operable to load a selected vacuum chamber with the at least one product package.

27. A vacuum packaging machine according to claim 26, wherein the at least one in-feed conveyor is vertically movable to select the vacuum chamber to be loaded.

30. A vacuum packaging machine according to claim 26, further comprising an internal conveyor in each vacuum chamber extending from the at least one in-feed conveyor.

In support of his rejections, the examiner relies on the following prior art references:

Mugnai	4,471,599	Sep. 18, 1984
Furukawa	4,869,050	Sep. 26, 1989
Bonnet	6,227,377 B1	May 8, 2001 (Filed Sep. 9, 1997)

¹ Claims 23 and 26 are added since claims 27 and 30 include the limitations of claims 23 and 26.

Claims 22 through 42 stand rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which lacks written descriptive support in the application disclosure as originally filed. Claims 22 through 26, 32, 38 and 39 stand rejected under 35 U.S.C. § 102(b) as anticipated by the disclosure of Furukawa. Claims 30, 31, and 40 through 42 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Furukawa and Mugnai. Claims 27 through 29 and 33 through 37 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Furukawa and Bonnet.

We have carefully reviewed the claims, specification and applied prior art, including all of the arguments advanced by both the examiner and appellants in support of their respective positions. This review has led us to conclude that only the examiner's §§ 102(b) and 103(a) rejections are well founded. Accordingly, we will sustain only the examiner's §§ 102(b) and 103(a) rejections for essentially those reasons set forth in the Answer and below.

We begin with the claim language. *Gechter v. Davidson*, 116 F.3d 1454, 1457, 43 USPQ2d 1030, 1032 (Fed. Cir. 1997); *In re Paulsen*, 30 F.3d 1475, 1479, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994). We give the terms in the claims on appeal the broadest reasonable meaning consistent with the appellants' specification. *See, e.g., In re Yamamoto*, 740 F.2d 1569, 1571, 222 USPQ 934, 936 (Fed. Cir. 1984).

We note that the term “permanently vertical stack of vacuum chambers” recited in claim 22 does not require that the vacuum chambers be permanently “attached” to each other. Rather, it only requires that the vacuum chamber be permanently maintained in a vertical stack. This interpretation is consistent with the specification as originally filed, which describes removable modular vacuum chambers being maintained in a vertical stack. See the specification, pages 5-6.

With the above interpretation in mind, we turn first to the examiner’s Section 112, first paragraph, rejection of claims 22 through 42 as containing subject matter which lacks written descriptive support in the disclosure as originally filed. As our reviewing court stated in *In re Kaslow*, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983):

The test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claimed language. The content of the drawings may also be considered in determining compliance with the written description requirement. (citations omitted)

Precisely how close the original description must be to the claimed subject matter to comply with the written description requirement is determined on a case-by-case basis. *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1561-63, 19 USPQ2d 1111, 1115-17 (Fed. Cir. 1991).

Applying the above test to the present facts, we determine that the specification as originally filed at page 6, lines 4-27, describes maintaining the vacuum chambers in a

vertical stack as shown by Figures 2 through 5. Thus, we concur with the appellants that the specification as originally filed provides written descriptive support for the language "permanently vertical stack of vacuum chambers" recited in claim 22.

In view of the forgoing, we are constrained to reverse the examiner's decision rejecting claims 22 through 42 under Section 112, first paragraph.

We turn next to the examiner's Section 102(b) rejection of claims 22 through 26, 32, 38 and 39 as anticipated by Furukawa. An anticipation under Section 102(b) is established only if Furukawa discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. **See *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).**

Here, the appellants do not dispute that Furukawa teaches a vacuum packaging machine comprising "a vertical stack of vacuum chambers each arranged to receive at least one unsealed product package and operable to perform an independent vacuum sealing operation on the at least one product package."² Compare the Answer, pages 4

² As stated by the examiner at page 9 of the Answer, the appellants acknowledged at page 5 of the response dated December 9, 2002 (Paper No. 12) that "vertically stacked" means one on top of the other, like the floors in a building; not necessarily one touching the other... This definition, according to the examiner (Answer, page 9), embraces the vacuum chamber arrangement set forth in Furukawa, since Furukawa shows vacuum chambers which are arranged "one on top of the other, not necessarily one touching the other." The appellants do not refute this determination by the examiner. See the Brief, pages 11 and 12. Rather, the appellants stated that "[the vacuum chamber arrangement set forth in Furukawa] may be viewed as a configuration comprising a vertical stack of some of the vacuum chambers." See the Brief, page 12.

and 5, with the Brief, pages 11 and 12. Thus, the dispositive question is whether the vertically stacked vacuum chambers of Furukawa is “permanently vertically stacked,” i.e., permanently maintained in a vertical stack as required by claim 22. See the Brief, page 12. On this record, we answer this question in the affirmative. As found by the examiner (Answer, page 11), “Furukawa ... would meet the limitation of being ‘permanently’ [vertically] stacked as the ovens [i.e., vacuum chambers] of Furukawa are constantly stacked one over the other[;] even through the rotation cycle, there is always one oven [i.e., one vacuum chamber] below or above another oven [i.e., another vacuum chamber].”³

In view of the forgoing, we are constrained to affirm the examiner’s decision rejecting claims 22 through 26, 32, 38 and 39 under Section 102(b).

We turn next to the examiner’s Section 103 rejections of claims 30, 31 and 40 through 42 as unpatentable over the combined disclosures of Furukawa and Mugnai and claims 27 through 29 and 33 through 37 as unpatentable over the combined disclosures of Furukawa and Bonnet. We note that the appellants do not dispute the examiner’s finding that Mugnai teaches the vacuum chamber corresponding to that recited in claim 30, which is used for the same purpose as that disclosed in Furukawa. Compare the Answer, page 6, with the Brief, page 12. We also note that the appellants do not dispute the examiner’s

³ Claim 22 does not require that the permanently vertically stacked vacuum chambers be remained stationary in the same location during the sealing operation.

findings that Bonnet teaches an adjustable conveyor corresponding to that recited in claim 27, which has more advantages than that disclosed by Furukawa. Compare the Answer, page 7, with the Brief, page 12. The appellants only argue that the applied prior art references do not teach and/or suggest employing a permanently vertical stack of vacuum chambers. However, for the reasons indicated *supra*, we determine that Furukawa teaches the claimed "permanently vertical stack of vacuum chambers". Thus, we concur with the examiner that one of ordinary skill in the art would have been led to employing the adjustable conveyor taught by Bonnet or the vacuum chamber taught by Mugnai in a vacuum packaging machine, motivated by a reasonable expectation of imparting the advantages stated in Bonnet and Mugnai.

In view of the forgoing, we affirm the examiner's decision rejecting claims 27 through 31, 33 through 37 and 40 through 42 under Section 103(a).

It follows that the decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED


CHUNG K. PAK
Administrative Patent Judge

Terry J. Owens
TERRY J. OWENS
Administrative Patent Judge

PETER F. KRATZ
Administrative Patent Judge

Appeal No. 2004-1989
Application No. 09/830,245

9

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